FILE COPY

IN THE

SUPREME COURT

OF THE

UNITED STATES

OCTOBER, 1935, TERM

R. C. TWAY COAL CO.,
Appellant,

v.

GLENN, Collector of Internal Revenue, *et al.*,
Appellees.

No. 649

BRIEF OF THE STATE OF WASHINGTON AS AMICA CURIAE

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STATE PRINTING PLANT

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I.

STATEMENT

This case is of supreme importance to the State of Washington because of the peculiar situation in the State. Coal mining began, as far as the reports show, in the State of Washington, in the year 1860. The first mines were those whose tunnels or main entrances were at a water level grade. This method of mining was very favorable to low cost production. But the State of Washington has a magnificent supply of coal which cannot be reached from tunnels or main en-

trances at a water grade level. There then developed in the State of Washington this situation: Mines whose tunnels or main entrances were at a water grade level, a method favorable to low cost production and mines where slopes or shafts became necessary to reach the coal measures and in these last named mines the costs of operation were greatly increased. The State of Washington has bituminous coal resources of approximately 33,877,000,000 tons, divided between low cost production mines and those mines where slopes or shafts became necessary and where the cost of production is increased. It can easily be seen that the mines of low cost production and mines of higher cost production existing in the same state resulted in cut-throat competition amongst the coal operators. It also resulted in the closing down of many large coal mines, namely: The Issaquah field in King County, the Cumberland field in King County, Spiketon, Burnett, Wilkeson and Fairfax fields in Pierce County and many mines in the southwestern part of the State in Thurston and Lewis Counties.

The Bituminous Coal Conservation Act of 1935 places Washington in Area 9 and District 23. That is, the State of Washington is practically given its own government as far as coal is concerned. Opportunity for conservation of Washington coal is thereby given and at the same time protection is given in interstate trade by the balance of the Federal Act.

It is thus readily seen why producers and miners favor the Conservation Act. The highest yearly production of coal in Washington was in 1919 when the

tonnage produced was 4,128,424 tons. The year 1918 comes next with 4,002,759 tons.

During the years 1918 and 1919 there were employed in the coal industry approximately 7,000 employees. Since that time the coal production tonnage has fallen to the low mark of tons produced as follows:

1930	2,290,990
1931	1,837,776
1932	1,604,580
1933	1,404,326
1934	1,383,103

and the employees to as low as 2,500.

Mr. A. W. Wilson, Chief State Mine Inspector of the State of Washington, in his report of coal mines for the year ending December 31, 1932, says: "The coal industry of the state has suffered a decrease of production during the year; 1,877,776 tons were produced in 1931, whereas 1,604,580 tons were produced in 1932, a decrease of 233,196 tons. The reason for this decrease in production can be attributed largely to the economic conditions and to the marked increase in the use of wood as fuel."

Mr. J. E. Bergin, Chief Mine Inspector of the State of Washington, in his annual report of coal mines for the year ending December 31, 1933, says this: "The coal industry has suffered a decrease of production during the year; 1,604,580 tons were produced in 1932, whereas 1,404,326 were produced in 1933, a decrease of 200,254 tons. The reasons for this decrease in production can be attributed largely to mild weather conditions and to a large tonnage of coal shipped here from other states on account of the mines in the Roslyn-Cle

Elum field being closed down pending a wage settlement."

The annual report of Mr. Bergin for the year ending December 31, 1934, reads as follows: "Coal production of the State of Washington in the year 1934 was 1,383,103 tons, whereas during the year 1933, 1,404,326 tons were produced. A decrease of 21,223 tons."

During a portion of 1932, 1933 and 1934, N. R. A. was in effect and during that time the wages of the men were given much thought and the Miners' Unions increased their membership and the prices of coal at retail were maintained up to and including the month of May, 1935. Under N. R. A. the miner received his wage and the operator his price and the price that the operator received was sufficient to pay the miners' wage and yield a profit to the operator. The operator in the State of Washington had made his price, knowing what the miner was to receive for his wage; the operator knew his wage costs and he was selling at a price that he could afford to pay his wage costs. But yet coal production did not increase.

The Bituminous Coal Conservation Act of 1935 became effective August, 1935, and it was greeted with delight by both operators and miners. It permitted the miner to get a satisfactory wage and it permitted the operator to know exactly his labor costs. It was a bill that was satisfactory to labor and operator alike.

It would be presumptuous for a lawyer to say that any one cause produced the effect, but the fact remains that the coal production in the State of Washington has increased during the year 1935 and it is almost back to

the 1932 level. But production is on the increase, it is on the up-grade.

These are the figures of Mr. J. E. Bergin, Chief Mine Inspector for the State of Washington, for the year 1935:

COAL PRODUCTION BY COUNTIES FOR THE YEARS 1934 AND 1935

	TONS			
County	*1934*	*1935*	*Increase*	*Decrease*
Cowlitz	45	128	83	.....
King	505,819	606,118	100,299	.....
Kittitas	566,002	627,752	61,750	.....
Lewis	43,910	49,686	5,776	.....
Pierce	139,323	135,345	.....	3,978
Thurston	27,772	33,491	5,719	.....
Whatcom	100,169	122,691	22,522	.....

The total gain in coal production in 1935 was 13.89 per cent and in detail was as follows:

COMPARATIVE STATEMENT
Year 1935 and Year 1934
Coal Produced, State of Washington

PRODUCER—	*Year 1935 Tons*	*Year 1934 Tons*	*1935 Increase Tons*	*1935 Decrease Tons*
Acme Coal Company	.....	598		598
B. & R. Coal Company	25,157	21,475	3,682	
Bianco Coal Mines	26,171	24,423	1,748	
Big 4 Coal Company	25,953	28,537		2,584
Black Beauty Coal Company	744	269	475	
Carbon Fuel Company	16,592	19,275		2,683
Dale Coal Company	116,615	63,907	52,708	
Desimone Coal & Coke Company	12,675	12,870		195
Echo Coal Company	.....	25		25
Foster Coal Company	59	174		115
Green River Coal Company	1,909	745	1,164	
Green River Gorge Coal Company	306	100	206	
Harris Coal Company	17,405	13,051	4,354	
Hi-Heat Coal Company	1,161	173	988	
Kangley Coal Company	193	.....	193	
Kummer Coal Company	3,810	2,791	1,019	
K. & F. Coal Company	32	.....	32	
Lawson Coal Company	34,959	19,214	15,745	
Maple Ridge Coal Company	105	1,170		1,065
McKay Operators, Inc	45	.....	45	
Morris Bros. Coal Mining Company	19,774	17,809	1,965	
Navy-Eureka Coal Company	280	383		103
Palmer Coking Coal Company	24,409	20,469	3,940	
Pacific Coast Coal Company	155,704	152,889	2,815	

COMPARATIVE STATEMENT—Continued

PRODUCER—	Year 1935 Tons	Year 1934 Tons	1935 Increase Tons	1935 Decrease Tons
Reynolds Coal Company	7,415	4,769	2,646	
Richmond, John C. Co.	98	.....	98	
Richmond-Stanley Coal Company	132	479		347
Strain Coal Company	33,914	17,351	16,563	
Springbrook Mining Company	7,263	2,240	5,023	
Springbrook King Coal Company	2,031	231	1,800	
Tiger Mountain Coal Company	1,133	965	168	
West Coast Fuel Company	70,074	79,437		9,363
Total King County	606,118	505,819	100,299	
			Gain	19.83%
Beekman Coal Company	3,461	1,825	1,636	
Blue Flame Coal Company	1,277	1,376		99
Cle Elum Coal Company	2,751	2,267	484	
Jonesville Coal Company No. 1	4,062	4,290		227
Jonesville Coal Company No. 2	10,481	6,649	3,832	
Lake Coal Company	1,679	622	1,057	
N. W. I. Co. No. 3	254,786	203,036	51,750	
N. W. I. Co. No. 5	38,270	57,744		19,474
N. W. I. Co. No. 7	160,538	177,499		16,961
N. W. I. Co. No. 9	55,584	28,691	26,893	
Roslyn-Cascade Coal Company No. 1	89,628	73,625	16,003	
Roslyn-Cascade Coal Company No. 3	4,356	7,229		2,873
Roslyn-Cascade Coal Company No. 4	140	.....	140	
Superior Coal Company	738	1,149		411
Total Kittitas County	627,752	566,002	61,750	
			Gain	10.91%
Black Prince Coal Company	12,113	9,486	2,627	
Conely Creek Coal Company	303	348		45
Dunne, Joe E. (Mendota)	1,340	.....	1,340	
Fords Prairie Coal Company	3,539	3,955		416
Hannaford Valley Coal Company	147	245		98
Koalgate Koal Kompany	1,271	1,861		590
Lincoln Coal Company	1,785	1,444	341	
Monarch Coal Mining Company	10,473	8,227	2,246	
Peoples Coal Mining Company	6,283	7,350		1,067
Reliance Coal Company	6,078	5,282	796	
Royal Coal Company	983	1,125		142
Stoker Coal Company	3,154	3,989		835
Wakefield Coal Company	2,217	598	1,619	
Total Lewis County	49,686	43,910	5,776	
			Gain	13.15%
Apex Coal Company	1,631	.....	1,631	
Blue Bell Coal Company	42	210		168
Buralli Coal Company	333	1,163		830
Burn-It Coal Company	.....	1,205		1,205
Bonato Coal Company	166	.....	166	
Bartoy Coal Company	548	.....	548	
Commercial Coal Company	1,451	.....	1,451	
Dependable Coal Company	2,640	3,252		612
Gale Creek Coal Company	4,088	3,413	675	
Pacific Coast Coal Company	106,005	117,991		11,986

COMPARATIVE STATEMENT—Continued

PRODUCER—	Year 1935 Tons	Year 1934 Tons	1935 Increase Tons	1935 Decrease Tons
Queen Coal Company (Kuranko)	904	1,176		272
Wilkeson Coal & Coke Company	17,527	10,913	6,624	
Total Pierce County	135,345	139,323		3,978
			Loss	2.86%
Bucoda Coal Company	33,463	27,699	5,764	
Black Jewel Coal Company	.....	72		73
Skookum Quality Coal Company	28	.....	28	
Total Thurston County	33,491	27,772	5,719	
			Gain	20.59%
Quesnoy Coal Company	128	4	124	
Silver Lake & Boback	.....	41		41
Total Cowlitz County	128	45	83	
			Gain	184.44%
Bellingham Coal Mines	122,341	97,873	24,468	
Glen Echo Coal Company	350	2,201		1,851
Blue Canyon Coal Company	.....	95		95
Total Whatcom County	122,691	100,169	22,522	
			Gain	22.48%
Wenatchee Coal Company	.....	63		63
Total Chelan County	.....	63		
			Loss	100.00%
Totals State	1,575,211	1,383,103	192,108	
			Gain	13.89%

During the year 1935 the yearly tonnage production increased to 1,575,211 tons, an increase over the year 1934 of 192,108 tons or 13.89 per cent increase. The largest commercial coal operators and the Secretary of the Miners' Union each make this statement: "This increase can rightfully be attributed to the restoration of confidence among the coal operators and employees alike, brought about by the stabilizing influences and effect of the National Bituminous Coal Conservation Act of 1935. This could not be brought about if left entirely to the respective states themselves, as it would be extremely difficult and impossible to work out an effective method of stabilization in and between the states themselves, it is apparent to anyone familiar with the coal mining industry that this regulation must

be established on a national basis, in the interest of the coal producer, the employees of the industry and the consuming public, and the national public interest and interstate commerce."

The operator was not present when the mine official made the statement and the mine official was not present when the operator made the statement. The statement was made by each in the absence of the other.

The State of Washington has a Workmen's Compensation Act. Under that act coal mines, including shaft sinking and all tunneling in connection with coal mines and coke ovens, is put under class 16. The Industrial Insurance rate is three per cent of the payroll and eight cents per day for Medical Aid. The contributions to the Workmen's Compensation Fund made by coal mining operations in the State of Washington during the years designated are as follows:

1928	$190,585.71
1929	180,793.96
1930	149,780.28
1931	111,055.87
1932	96,684.40
1933	105,607.96
1934	110,582.25
1935	115,697.60

This shows an accurate picture of the conditions in the coal mining industry. The contributions each year from 1928 to 1932 lessened because the payroll was smaller.

The statistics used hereafter are taken from the annual reports of the Chief Mine Inspector of coal mines of the State of Washington for the years 1932, 1933, 1934 and 1935. 1932 is used as a starting point because

of the small production of coal in the State of Washington. As coal is produced in greater quantities its value at the mine per ton decreases. Therefore any method that tends to a larger production of coal will enable the operator to sell at a less price. In 1932, the year of poorest production, the coal value at the mine per ton was $2.98; in 1933, when there was a larger production, the coal value at the mine per ton was $2.84; in 1934, when there was still a larger production than in 1932, the coal value per ton at the mine was $2.72. Larger production means cheaper coal to the consumer, which is fair provided the miner gets adequate pay and the operator his profit. During all of this time there was a definite determination of the labor costs for the operator and the contented miner was getting coal to the surface at less price than heretofore.

In 1931, eight mines were abandoned; in 1932, four; in 1933, eight, and in 1934, five. During the same time old mines were reopened as follows: 1931, ten; 1932, four; 1933, four, and in 1934, four. Also in the same period new mines were opened as follows: 1931, two; 1932, thirteen; 1933, four; 1934, four. During these years more old mines were reopened than abandoned and adding the new mines, the Court will see the activity in the coal mining industry in the State of Washington.

The regulation of coal mining to be effective is a Federal matter. So long as the Federal Government does not act, the States cannot act. If the State of Washingon alone had a Bituminous Coal Conservation Act, and no other state had one, the employers of the State of Washington would be placed at a disadvantage

in interstate competition. If we are to have bituminous coal conservation we must have a Federal law which will remove the disadvantage against those states which are willing to go ahead and protect the operators and miners as well as the consuming public.

The advantage of a Federal law and Federal regulation have been known to Congress for many years past. Since 1924 there has been in the Federal Statutes the Federal estate tax law. In that law a credit of eighty per cent is allowed for payment made to the states under state inheritance tax law. That provision was inserted to remove the disadvantage of states that had enacted inheritance tax laws in comparison with states which had no such laws. T[illegible]vision in the Federal and state tax laws has proved a great boon to the states with inheritance tax laws in putting a stop on the removal of wealth to the states which do not have inheritance tax laws.

In 1932 and the years immediately preceding, the relations of labor with the producers were very strained. There were strikes, disturbances and unrest. Labor relations have improved under the collective bargaining principle of the conservation act. Disturbances and unrest have been eliminated. Wages have been increased and the work days shortened to seven hours with a five-day-week and there is also a uniform retail price to the consumer under the existing conservation act. There is under contract 89 per cent of the tonnage between the coal producer of Washington and District No. 10 United Mine Workers of America, which contract terminates March 31, 1937. Conditions of employment have been

greatly improved and business tranquility prevail in the mining industry for the first time in many years.

Coal is such a product that it cannot lose its interstate character. Being of this character the states find themselves powerless to establish a regulatory power on the selling price of coal at the mine for interstate transportation. The same is true of the price of coal shipped into other states for marketing purposes, owing to the varying degree of B. T. U. content, moisture, ash, etc. of the different coal.

The intercourse between the states is so great that experience has shown that it is impossible to regulate minimum wages or maximum hours for the coal industry by the states. Only by regulation by hours and wages on a national basis can peace prevail in the coal industries.

Unemployment has been rampant in the coal mining communities of the state, which has been a heavy drain on the taxpayers, more so when the former coal producing properties are not at the present time contributing to the various tax departments of the state, county and cities.

Housing conditions in the various coal camps are greatly in need of improvement, and while it is no longer a condition of employment for the employees to live in the company houses and trade at company stores, there are many employees, who, through the slack working time at the mines, are unable to take advantage of these opportunities and are forced through necessity to still live in company houses and trade at the company stores. These conditions can and will be improved if the Bituminous Coal Conservation Act of 1935 is allowed to operate on a national basis.

This act is in a sense an emergency act. It is effective for only four years after its approval and after four years shall cease to exist. The results in the State of Washington in the short time that it has been in existence certainly entitle the act to a trial.

There was a time within the last fifteen years when the coal mining towns of the State of Washington were pleasant places to live in. The schools were large, the recreation halls were filled and the men were being paid and getting a substantial wage. Their children not only went through the public school but through the high school and some to college. It was not a tax on the miner to clothe his family well and to furnish good surroundings.

But of late years, a change has come, the schools are no longer filled with pupils, the recreation halls are idle and their windows broken. Houses which once resounded with laughter are no more, they have been sold and trucked away and moved to portions of the county where there is no coal mining. The men have scattered and their families have scattered and they were compelled to look for other work. Men remained in the mining community until their savings were exhausted and they were compelled to move in the hope of getting work in other places.

So far the results of the Bituminous Coal Conservation Act have been encouraging. The consumer is amply and ably protected, the operator is satisfied and the worker is satisfied. It is an ideal situation and has helped the coal mining industry of the State of Washington from every angle. It has not proved to be a fan-

tastic scheme or an impossible idea. It has turned out to be a prosperity restorative.

The coal miner has been on relief for quite a while, his job having evaporated under his feet but he did not want to be on relief, he wanted to work and he remained at the mining towns as long as he could in the hope of going back to work. The Bituminous Coal Conservation Act seems to be a work program not only beneficial to the miner who wants to work but the operator who wants to sell his coal. The Bituminous Coal Conservation Act not only has helped to relieve the country of many unemployed but it has helped the operator make a profit. It has done away with a great waste of human values and the great waste of money.

As has been stated before this act is in the nature of the emergency measure. It automatically ceases to exist four years after its approval. It is necessary as part of the reconstruction resulting from the consequences of the depression. Any recovery to a higher level of prosperity to which the miner was formerly accustomed would be an improvement. Like others the savings of the miners were wiped out during the depression; their jobs are gone. Any thing that can be done to place them in a more favorable position will not only help them but the rest of the country. Long disuse may have lessened the skill of many miners, not to mention the danger that the old skill if retained may have been made useless by new inventions and process of new machinery.

There is no doubt that the consumer, the operator and the miner looking at the coal business in the State of Washington realized that something had to be done and that something quickly. The Bituminous Coal Conserva-

tion Act has not turned out to be a cruel promise and has not raised useless hopes. It has justified itself and removed many from the slough of economic despondency. Something had to be done and steps had to be taken to prevent and mitigate the depression of recent years. The Bituminous Coal Conservation Act is not a complete solution; it was not meant to stay on the statute books; however, it is a four-year move, an emergency piece of legislation and has justified itself as emergency legislation. It is built on tested foundations and they are: A fair control of prices to the consumer, a fair controlled profit of the operator and a fair control of wages to the miner. If this law existed only on paper and did not show results it should be abolished, but in six months in the State of Washington it has justified its existence although it has scarcely begun to function.

Under our system of government with railroads and truck lines and aeroplanes transportation ever draws nearer and nearer the farthest parts of our Country. The need for regulation to transportation and the things such as coal which makes transportation possible is felt, no state can fold itself up and attempt regulations that will be effective outside of its borders. National standards are required more and more and especially for an instrumentality, if it may be so called, or a mineral like coal, the help of the Federal government is necessary.

When you consider the condition of a coal industry in the State of Washington as it has existed since 1929, there was a call for an immediate action. This immediate action was not only necessary to put your wage earner to work but to save your operator and to give your consumer coal. The Bituminous Coal Con-

servation Act is not a panacea, it is not Utopian, it is merely to help over a trying place and when the four years pass by, it will automatically go out of existence. It is a remedial measure; it was essential in August, 1935; it is essential now. It is clearly a part of wisdom to do all that can be done to prevent a recurrence of the acute situation that operators, miners and sellers found in the coal business in 1931 and 1932. The State's action would have been inadequate and it is in this light that Federal regulation should be viewed. The States in their union as the United States are doing in the coal field what each individual state was unable to do. From the short experience since the passage of this act, it would seem that much will be gained in the next four years, the short life of this act.

II.
ARGUMENT

The Conservation Coal Act being such a good thing a question may be asked, why does not the State of Washington enact such a law? The reason the State of Washington has not enacted such a law is because it is unwilling to impose such a cost upon its own coal industry unless similar provisions as to hours and prices were made by neighboring states. This it is that makes it particularly impossible for the State of Washington to act individually. This great obstacle can only be hurdled by the Federal law placing the same burdens upon the industry throughout the country and amongst the various states. There is no constitutional restriction on the State of Washington and it could pass such an act as far as intrastate coal is concerned. But such state regulation would injure the producers of coal within this State because they would at once lose business to coal sold and shipped in interstate commerce at lower prices. For that reason as long as interstate shipments are unregulated state regulations within the State of Washington would merely accentuate existing difficulties. No state is so favored under the Bituminous Act as Washington except only the State of Montana. All producing counties in Washington are in District No. 23 under the Bituminous Conservation Act. Therefore, the Federal Act makes the State a unit.

The State cannot regulate coal in interstate commerce because of Article 1, Section 8, Clause 3 of the Constitution of the United States. While it has the power and there are no constitutional restrictions, the State of Washington would ruin its mines by a coal

bill regulating minimum wages or maximum hours and would handicap the coal production in the State of Washington in competition with the producers of other states. And there is intense competition in the West. Where wood is plentiful and California oil is shipped in, add state's regulation of wages and hours and it would mean a shutting down of the coal mines in the State of Washington.

In the year 1912 the State of Ohio passed an amendment to the Constitution giving the Legislature full power over both the methods of mining and marketing coal. This amendment was adopted by the State of Ohio by a large majority. Although many legislatures have met since 1912, not a single statute has been enacted pursuant to that amendment. The Legislature saw the futility of action under the circumstances: that those states producing and marketing coal not having enacted similar statutes would be able to undersell the coal producers in the State of Ohio. Coal is a national resource and can be regulated only by Federal government.

Respectfully submitted,

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